



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
Of Moore Automotive, Inc.

Case No.: TR-13-0039

FINAL DECISION

On October 28, 2013, an employee of the Division of Motor Vehicles, Department of Transportation filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Moore Automotive, Inc. The claim along with documents gathered by the Department during its investigation of the claim was referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on May 5, 2014. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Transportation
Division of Motor Vehicles
Revenue Accounting
P.O. Box 7736
Madison, WI 53707-7736

Glen Garner
Moore Automotive, Inc.
9915 West Fountain Avenue
Milwaukee, WI 53224

Aegis Security Insurance Company
300 International Parkway, Suite 184
Heathrow, FL 32746

FINDINGS OF FACT

1. Moore Automotive, Inc., (Dealer) was a motor vehicle dealer licensed by the Wisconsin Department of Transportation (Department) pursuant to Wis. Stat. § 218.0111. The Dealer's facilities were located at 5829 West Villard Avenue, Milwaukee, Wisconsin. The Dealer was put out of business on August 29, 2013.

2. The Dealer had a surety bond satisfying the requirements of Wis. Stat. § 218.0114(5) from June 1, 2011, until it was cancelled effective August 7, 2012 (Platte River Insurance bond number 41228743). The Dealer obtained a replacement surety bond with a beginning date of June 1, 2012, and ending date of May 31, 2013 (Aegis Security Insurance Company bond number 2051).

3. During the time period between March 25, 2013, and July 3, 2013, the Dealer submitted to the Department's Division of Motor Vehicles (DMV) nine Wisconsin Title and Registration Applications (MV-11s) for motor vehicles that the Dealer had sold to retail customers. The Dealer submitted three Automated Clearing House (ACH) payments to cover the required fees to process the applications. The ACH transactions were submitted on March 29, 2013 (\$892.00), July 8, 2013 (\$329.00), and July 9, 2013 (\$144.50).

4. The three ACH payments were denied due to insufficient funds in the Dealer's account. The DMV sent a letter to the Dealer requesting payment of the required fees plus a \$20.00 service charge for each denied ACH payment. The DMV received no response to the letter from the Dealer.

5. On October 28, 2013, the DMV submitted a claim against the surety bond of the Dealer in the amount of \$1,425.50. The amount of the bond claim represents the sum of the unpaid fees and service charges for the nine MV-11s submitted to the DMV.

6. The Dealer's failure to submit the required fees along with the MV-11s constitutes a violation of Wis. Stat. § 342.06(1). A violation of Wis. Stat. § 342.06(1), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles).

7. The loss sustained by the DMV was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$912.00, the unpaid fee and the service charge for the March 29th ACH payment. The other two ACH payments submitted by the Dealer to the DMV were made in July of 2013. The surety bond issued by Aegis Security Insurance Company expired on May 31, 2013. Accordingly, these unpaid fees and service charges are not allowable bond claims.

8. The DMV's claims arose during the time period between March 25, 2013, and July 3, 2013, the dates the three denied ACH payments were submitted. The bond

claims were filed within three years of the ending date of the one-year period that a surety bond issued by Aegis Security Insurance Company was in effect and is, therefore, a timely claim.

CONCLUSIONS OF LAW

1. The DMV's claim arose during the time period between March 25, 2013, and July 3, 2013. Aegis Security Insurance Company issued a one year surety bond to the Dealer covering a one-year period commencing on June 1, 2012, and ending date on May 31, 2013. A portion of the claim arose during the period covered by the surety bond.
2. The DMV filed claim against the motor vehicle dealer bond of the Dealer on, October 28, 2013. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.
3. The DMV's loss was caused by an act of the Dealer which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), a portion of the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$912.00. The remaining \$513.50 of the claim did not arise during the time period covered by the surety bond and; therefore, pursuant to Wis. Admin Code § Trans 140.21(1)(b), is not an allowable claim.
4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by the Division of Motor Vehicles against the motor vehicle dealer bond of Moore Automotive, Inc., is APPROVED in the amount of \$912.00. The Aegis Security Insurance Company shall pay the Division of Motor Vehicles this amount for the loss attributable to the actions of Moore Automotive, Inc. The remaining \$513.50 of the claim filed by the Division of Motor Vehicles is not allowable and is DENIED.

Dated at Madison, Wisconsin on June 20, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
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By: _____

Mark F. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.